

REMARKS

The above-identified application has been carefully reconsidered in view of the Office Action mailed May 23, 2000. Early and favorable reconsideration and allowance of the application as now presented are respectfully requested.

Enclosed herewith is a copy of U.S. patent number 5,460,192 granted to McClain on October 24, 1995. Applicant believes that the disclosure of the '192 patent is substantially immaterial to the patentability of the present invention in view of the disclosure of the '593 patent which was primarily relied upon in the Office Action. Nevertheless, the '192 patent is submitted herewith in order to obviate any possible inference of failure to comply with the duty of candor.


The existence of the '192 patent was not known to applicant prior to the receipt of the present Office Action on May 30, 2000. Applicant believes that the Examiner was already aware of the '192 patent in view of the fact that it is identified in the '593 patent.

It is respectfully submitted that the claims of the application as now presented are fully patentable over the prior art, and in particular, the McClain '593 patent. This assertion is based on the following salient differences between the present invention as defined in the claims as now presented and the disclosure of the McClain '593 patent:

1. The present invention relates to the disposition of a human skin tanning composition onto the skin of a person to be tanned. In direct contradistinction thereto, the McClain '593 patent relates to the disposition of suntan oil and/or sun blocking compositions to the skin of an individual to prevent damage by overexposure to radiation from the sun.

The importance of the foregoing distinction will be apparent when fully considered. The existence of human skin tanning compositions was well known long prior to the effective filing date of the McClain '593 patent. Nevertheless, there is no mention anywhere in the McClain '593 patent of the usage of the apparatus disclosed herein for applying human skin tanning compositions to the skin of persons to be tanned. The reason that McClain did not mention the possibility of using his device for applying human skin tanning compositions is apparent. Human skin tanning compositions must be applied with absolute uniformity in order to achieve the desired uniform tanning effect. No such necessity is observed in the application of suntan oils and sun blocking compositions. In the latter case the fact that certain areas of the skin are coated to a greater degree than other areas is of no importance whatsoever provided only that there are no gaps or untreated areas remaining after the material is applied.


2. The apparatus of the present invention is utilized to apply human skin tanning compositions to substantially the entire body of the person being tanned. It is noted in this regard that it as used herein the term "substantially" is meant to delimit only the eyes (for obvious reasons) and the palms and soles of the feet which experience has shown cannot be effectively tanned. In direct contradistinction to the apparatus of the present invention, the apparatus of the McClain '593 patent does not apply tanning lotion or sun block material to the head of the person being treated. Exactly why McClain chose to omit the head from treatment is not apparent from the disclosure of the '593 patent. However, it is abundantly clear that it has been left to applicant to devise a successful procedure for treating substantially the entire body of a person to be tanned.



3. The claims of the application as now presented are limited to apparatus wherein the nozzle which is used to spray the human skin tanning composition is continuously moved in a substantially horizontal plane relative to the person being tanned. McClain discloses no such structure. The reason for such omission is apparent. Because McClain teaches the application of suntan oils and sun blocking compositions, uniformity in the disposition of the material onto the skin of the person being treated is not necessary. As distinguished from the McClain apparatus, the apparatus of the present invention must apply human skin composition in an entirely uniform manner in order to achieve the desired uniform tan.

4. Applicant's apparatus as defined in the claims as now presented includes an air circulation apparatus entirely independent of the liquid spray apparatus which is used to contain and remove overspray, that is, material which is not deposited onto the body of the person being tanned. No such apparatus is even remotely suggested by the McClain '593 patent. Here again, the reason for such omission is apparent. It is simply not necessary in the operation of the McClain device to achieve a rigorously uniform application of the material being sprayed. To the contrary, McClain is not concerned about depositing an excess of material on certain portions of the body as long as no portion of the body is left uncoated.

It is therefore respectfully submitted that the patentability of the claims of the present application as now presented over the McClain '593 patent is readily apparent. The McClain '593 patent does not disclose an enclosure for receiving the entire body of the person to be tanned. The McClain '593 patent does not disclose apparatus for continuously moving the liquid discharge nozzle in a substantially horizontal plane to the body of the person to be tanned. The McClain '593 patent does not disclose the circulation of air independently from the discharge of



liquid from the nozzle in order to contain overspray and thereby assure a substantially uniform coating of the applied material over the entire body of the person being tanned.

A Terminal Disclaimer is presented herewith. It is respectfully submitted that the enclosed Terminal Disclaimer eliminates the prior Laughlin patent as a reference herein and overcomes a rejection for double patenting.

It is respectfully submitted that the present amendment comprises a sincere attempt by applicant to address all of the issues presented in the Office Action and to overcome the rejection based on the McClain '593 patent. Early and favorable reconsideration and allowance of the application as now presented are respectfully requested.

Respectfully submitted,

MICHAEL A. O'NEIL, P.C.



Michael A. O'Neil
Registration No. 23,007

Date: August 1st, 2000
5949 Sherry Lane, Suite 1030
Dallas, Texas 75225
(214) 739-0088
(214) 739-8284 (Fax)

